

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**LAURA DAVIS and EDWARD DABROWSKI
as parent of a disabled student, C.D.**

Plaintiffs,

vs.

CARMEL CENTRAL SCHOOL DISTRICT

Defendant.

Civil Action 08 -CIV- 04450 (KMK)

ANSWER TO COMPLAINT

Defendant, by its attorneys, SHAW, PERELSON, MAY & LAMBERT, LLP, as and for its answer to the Complaint, alleges as follows:

1. Denies the allegations at paragraphs numbered 17, 22 through 25, 31, 34, 39 through 42, 50, 53 through 55, 57 through 64 (including both sets of paragraphs numbered 57 and 58) and the final paragraph before the Wherefore clause identified as paragraph numbered 63 of the Complaint.

2. Admits the allegations at paragraphs numbered 5 and 6 of the Complaint.

3. Denies the allegations at paragraphs numbered 8, 10 through 15, 18 through 19, 26 through 28, 30, 32 through 33, 35 through 38, 43 through 47 and 49 of the Complaint and respectfully refer the Court to the complete record of the administrative proceedings below and to the decisions of the State Review Officer as to the true relevant facts and circumstances concerning these allegations.

4. Admits the allegations at paragraph numbered 1 of the Complaint, except denies that the plaintiffs were a “prevailing party” in the administrative proceedings below.

5. Denies the allegations at paragraph numbered 2 of the Complaint, except admits that the instant action is an appeal of the November 14, 2007 decision of the State Review Officer in SRO

Decision 07-114.

6. Denies the allegations at paragraph numbered 3 of the Complaint, except admits that the plaintiffs seek a reversal of the November 14, 2007 decision of the State Review Officer in SRO Decision 07-114.

7. Denies the allegations at paragraph numbered 4 of the Complaint, except admits that the Court has original subject matter jurisdiction of this action under the IDEA.

8. Denies the allegations at paragraph numbered 7 of the Complaint, except admits that the defendant is the local educational agency under the IDEA, is responsible for providing a free appropriate public education to children classified as disabled under the IDEA and that C.D. has been classified by the defendant as learning disabled.

9. Denies the allegations at paragraph numbered 8 of the Complaint, except admits that the plaintiffs seek an order that reverses the decision of the State Review Officer in SRO Decision 07-114 and declares their unilateral placement of C.D. at the Kildonan School in Amenia, New York to be appropriate under the IDEA.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations at paragraph numbered nine of the Complaint, except admits that the plaintiffs rejected the defendant's proposed placement of C.D. and unilaterally removed C.D. from the defendant's schools.

11. Denies the allegations at paragraph numbered 20 of the Complaint, except admits that the CSE convened to develop an IEP for C.D. for the 2006-2007 school year on March 28, 2006.

12. Denies the allegations at paragraph numbered 21 of the Complaint, except admits that the CSE meeting convened on March 28, 2006 adjourned without the adoption of an IEP for C.D.

for the 2006-2007 school year at that time and respectfully refers the court to the full record of the administrative proceedings below and to the decision of the State Review Officer in SRO Decision 07-114 as to the true relevant facts and circumstances concerning these allegations.

13. Denies the allegations at paragraph numbered 29 of the Complaint, except admits that the CSE proposed C.D. for a placement at the defendant's high school for her first year, i.e., ninth-grade, of high school and respectfully refers the court to the full record of the administrative proceedings below and to the decision of the State Review Officer in SRO Decision 07-114 as to the true relevant facts and circumstances concerning these allegations.

14. Denies the allegations at paragraph numbered 48 of the Complaint, except admits that the defendant had received and reviewed the plaintiffs' initial complaint by September 15, 2006 and revised complaint by September 18, 2006 and based upon those complaints was made aware of the bases expressed for those complaints.

15. Denies the allegations at paragraphs numbered 51 and 52 of the Complaint, except admits that the impartial hearing officer – whose decision was reversed by the State Review Officer in SRO Decision 07-114 – found in favor of the plaintiffs as to their claim that the 2006-2007 IEP failed to provide C.D. with a free appropriate public education and that the services offered to C.D. were appropriate and respectfully refers the court to the full record of the administrative proceedings below and to the decision of the State Review Officer in SRO Decision 07-114 as to the true relevant facts and circumstances concerning these allegations.

16. Denies the allegations at paragraph numbered 56 of the Complaint, except admits that a revised IEP correcting a clerical error in the earlier IEP was provided to the plaintiffs on or about September 6, 2006 and respectfully refers the court to the full record of the administrative

proceedings below and to the decision of the State Review Officer in SRO Decision 07-114 as to the true relevant facts and circumstances concerning these allegations.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim for which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The State Review Officer's decision challenged in this action is supported by the preponderance of the evidence in the administrative record below, is entitled to substantial deference and should be affirmed.

WHEREFORE, the defendant requests that the court render an order dismissing the Complaint in all respects, affirming the decision of the State Review Officer in SRO Decision 07-114 and granting the defendant such other and further relief as the court may deem just and proper.

Dated: March 12, 2008

SHAW, PERELSON, MAY& LAMBERT, LLP
Attorneys for defendant

By: _____S/_____
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